



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY VALLEY REGIONAL OFFICE

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Secretary of Natural Resources

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David K. Paylor
Director

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Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO MILLERCOORS LLC FOR MILLERCOORS LLC Registration No. 81012

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and MillerCoors LLC, regarding MillerCoors LLC, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law, Regulations, and the applicable permit.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Facility" means the MillerCoors LLC facility, located at 5135 South Eastside Hwy, Elkton, Virginia.
6. "MillerCoors" means MillerCoors LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. MillerCoors is a "person" within the meaning of Va. Code § 10.1-1300.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
9. "PCE" means a partial compliance evaluation by DEQ staff.
10. "Permit" means a Title V permit to construct and operate a brewery and packaging facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to MillerCoors on June 21, 2016 under Registration No. 81012.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. MillerCoors LLC is the owner and operator of a brewery and packaging facility located at 5135 South Eastside Highway in Elkton, Virginia. MillerCoors is subject to the Permit, issued on June 21, 2016.
2. On November 9, 2018, DEQ received a report from MillerCoors for the September 12-13, 2018 stack test performed on the stationary reciprocating engine generator plant, CHP-1. DEQ performed a PCE of the report, and requested additional information from MillerCoors via email. In response, MillerCoors reported that the Unit CHP-1 engine ran for approximately 10,258 hours since the previous stack test. The results of the stack test indicated that MillerCoors passed the stack test and did not exceed emissions limits.

3. Permit Condition 76 requires that: "Within three years of the initial performance test conducted on April 22, 2014, or every 8,760 hours of operation of the Unit CHP-1, whichever comes first, subsequent performance testing shall be conducted for NOx, CO, and VOC using the procedures in Condition 77 and methods specified in Table 2 of 40 CFR 60, Subpart JJJJ."
4. On January 30, 2019, based on the PCE and follow-up information, DEQ issued NOV No. AVRO001097-001 to MillerCoors for the violations described in paragraphs C(2) through C(3), above.
5. On February 13, 2019, DEQ staff met with MillerCoors representatives discuss the NOV. At the meeting, MillerCoors explained that the delay in testing was a result of the company's decision to reset the clock for the stack test at the time of the CHP-1's engine replacement; it was MillerCoors understanding that the hours should be reset to zero at that time. DEQ clarified that at a minimum the stack test is required every three years or within 8,760 of operational hours for the CHP-1 and that the scope of this maintenance work did not qualify as a new source or as a reconstructed unit. In order to prevent future delays in testing, MillerCoors proactively implemented a process change by performing the stack test on the CHP-1 annually. Additionally, the hours of operation and the annual stack test requirement were added by MillerCoors to their internal compliance monitoring system.
6. Based on the results of the November 9, 2018 PCE, the February 13, 2019 meeting, and the documentation submitted by MillerCoors, the Board concludes that MillerCoors has violated Permit Condition 76 as described in paragraphs C(2) through C(3), above.
7. DEQ has verified that the violations described in paragraphs C(2) and C(3), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders MillerCoors, and MillerCoors agrees to:

1. Pay a civil charge of \$12,575.10 in settlement of the violations cited in this Order.
 - a. MillerCoors shall pay \$3,175.10 of the civil charge within 30 days of the effective date of this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

MillerCoors shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, MillerCoors shall be liable for attorneys' fees of 30% of the amount outstanding.

- b. MillerCoors shall satisfy \$9,400 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix A of this Order.
- c. The net project costs of the SEP to MillerCoors shall not be less than the amount set forth in Paragraph D.1.b. If it is, MillerCoors shall pay the remaining amount in accordance with Paragraph D.1.a of this Order, unless otherwise agreed to by the Department. "Net project cost" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.
- d. By signing this Order MillerCoors certifies that it has not commenced performance of the SEP.
- e. MillerCoors acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by MillerCoors to a third party, shall not relieve MillerCoors of its responsibility to complete the SEP as described in this Order.
- g. In the event it publicizes the SEP or the SEP results, MillerCoors shall state in a prominent manner that the project is part of a settlement of an enforcement action.
- h. The Department has the sole discretion to:
 - Authorize any alternate, equivalent SEP proposed by MillerCoors; and
 - Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
- i. Should the Department determine that MillerCoors has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify MillerCoors in writing. Within 30 days of being notified, MillerCoors shall pay the amount specified in Paragraph D.1.b, above, as provided in Paragraph D.1.a, above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of MillerCoors for good cause shown by MillerCoors or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. AVRO001097-001 dated January 30, 2019. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, MillerCoors admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. MillerCoors consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. MillerCoors declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by MillerCoors to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. MillerCoors shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. MillerCoors shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. MillerCoors shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances

are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and MillerCoors. Nevertheless, MillerCoors agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after MillerCoors has completed all of the requirements of the Order;
 - b. MillerCoors petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to MillerCoors.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve MillerCoors from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by MillerCoors and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of MillerCoors certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind MillerCoors to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of MillerCoors.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, MillerCoors voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 12th day of April, 2019.



Amy T. Owens, Regional Director
Department of Environmental Quality

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MillerCoors LLC voluntarily agrees to the issuance of this Order.

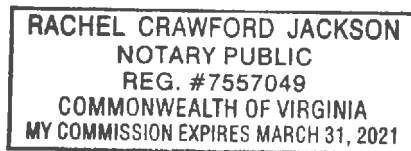
Date: 4/10/19 By: Michael Ouderkirk, VP/Plant Manager
(Person) (Title)
MillerCoors LLC

Commonwealth of Virginia

City/County of Rockingham

The foregoing document was signed and acknowledged before me this 10 day of April, 2019, by Michael Ouderkirk who is VP/Plant Manager of MillerCoors LLC, on behalf of the company.

Rachel Crawford Jackson
Notary Public



7557049

Registration No.

My commission expires: 3/31/21

Notary seal:

APPENDIX A
MILLERCOORS, LLC
SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

In accordance with Va. Code § 10.1-1186.2, MillerCoors shall perform the Supplemental Environmental Project (SEP) identified below in the manner specified in this Appendix. As used in this Order and Appendix, SEP means an environmentally beneficial project undertaken as partial settlement of a civil enforcement action and not otherwise required by law.

1. The SEP to be performed is for MillerCoors to purchase three sets of personal protective equipment (PPE), a PPE helmet, an emergency response drone, and a MSA 4-Gas Meter for the McGaheysville Volunteer Fire Company.
2. MillerCoors shall submit progress reports on the SEP on a monthly basis, due the 10th day of each month.
3. The SEP shall be completed by June 30, 2019.
4. MillerCoors shall verify that the SEP has been completed in accordance with the terms of this Order, and certified either by a Certified Public Accountant or by a responsible corporate officer or owner. MillerCoors shall submit the final report and certification to the Department within 45 days from the completion of the SEP project.
5. If the SEP has not or cannot be completed as described in the Order, MillerCoors shall notify DEQ in writing no later than 30 days of the discovery of the inability to complete the SEP. Such notification shall include:
 - a. an alternate SEP proposal, or
 - b. payment of the amount specified in Paragraph D.1.b as described in Paragraph D.1.a.
6. MillerCoors shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation within 45 days of the project completion date. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from MillerCoors's Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.
7. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Tiffany R. Severs
Enforcement Team Leader
VA DEQ –Valley Regional Office
Physical: 4411 Early Road, Harrisonburg, VA 22801
Mailing: PO Box 3000, Harrisonburg, VA 22801